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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 263

IANTHE B. HARDENBERGH, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

GABRIELLE HARDENBERGH, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 15-22) is reported at 17 T. C. 166. The opinion of the Court of Appeals (R. 39-46) is not yet reported.

JURISDICTION

The judgments of the Court of Appeals were entered on June 24, 1952. (R. 46-47.) The petition for writs of certiorari was filed on August 8, 1952.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

The decedent died intestate leaving his wife, daughter and son as sole surviving heirs. Taxpayers herein, the wife and daughter, executed and filed an instrument labeled a "renunciation or relinquishment of their respective interests." Thereafter, all of the property available for distribution was distributed to the son by order of the probate court. The question presented is whether under Section 1000 of the Internal Revenue Code, imposing the gift tax, each taxpayer made a gift of her interest in the property to the son.

STATUTE AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra,* pp. 12-14.

STATEMENT

The facts found by the Tax Court (R. 16-19) may be summarized as follows:

Taxpayers Ianthe B. Hardenbergh and Gabrielle Hardenbergh are mother and daughter, respectively, and reside in Minnesota. (R. 16.) George S. Hardenbergh (the decedent), husband of Ianthe and father of Gabrielle, died intestate in St. Paul, Minnesota, on April 2, 1944, leaving taxpayers and a son by a former marriage, George Adams Hardenbergh, aged 26, as his sole surviving heirs at law. Ianthe was the stepmother of George and Gabrielle was his half sister. George was four years old when his father married Ianthe, who

reared him, and a devoted family relationship existed between all of them. (R. 16.)

During 1943, the year prior to his death, the decedent had several conversations with taxpayers in which he proposed leaving practically his entire estate to George in order to equalize somewhat the financial worth of his two children. At that time, Ianthe was worth $2,000,000 and Gabrielle was worth a large sum in her own right. This proposal was agreeable to taxpayers and they assented. Accordingly, the decedent arranged with his attorney for the preparation of a will carrying out this intention. On Saturday, April 1, 1944, the attorney brought the typewritten document to him to be executed, but he was too ill on that date to execute the will. It was decided to delay its execution until Monday, April 3d, but he died on April 2nd, before the will could be executed. (R. 16-17.)

On September 20, 1944, taxpayers filed in the probate court, where the estate of decedent was then being administered, "a renunciation or relinquishment of their respective interests in said estate," as follows (R. 17-18):

> We, Ianthe B. Hardenbergh and Gabrielle Hardenbergh, widow and daughter respectively of the above named George S. Hardenbergh, deceased, do hereby, coincidentally and jointly, definitely and finally renounce and reject, as of April 2, 1944, the date of death of said George S. Hardenbergh, any and all interest which we may then have had or may now have in and to the estate of said George S.

Hardenbergh. We do hereby release and forever discharge the said estate and every part thereof from any claim or interest which may heretofore have accrued or might at any time hereafter accrue to us or either of us by reason of the laws of succession of the State of Minnesota; and we further agree that we will not at any time hereafter assert any claim or interest of any kind, nature or description in or to said estate or any portion thereof.

We further respectfully state to the above named Court and to anyone interested in said estate that our purpose in renouncing any and all interest we may have in said estate is as follows: just prior to the death of George S. Hardenbergh, he, knowing that I, Ianthe B. Hardenbergh, had a large independent estate, and that I, Gabrielle Hardenbergh, had been amply provided for by trusts created by my grandfather, R. H. Bronson, and by my mother, Ianthe B. Hardenbergh, with our full knowledge and consent, had prepared a Last Will and Testament in which he devised and bequeathed substantially all of his estate to certain named trustees in trust for the sole benefit of his son, George Adams Hardenbergh. The provisions of said Last Will and Testament were agreeable to us. However, George S. Hardenbergh died before execution of said Last Will and Testament could be completed. We renounce all of interest in said estate so that the intention of the said George S. Hardenbergh may be carried out without delay or the intervention of other interests.

The probate court issued the final decree of distribution, on July 24, 1945, reading in part as follows (R. 18-19):

> * * * that * * * Ianthe B. Hardenbergh and Gabrielle Hardenbergh have fled with this court a renunciation of their interest in the above named estate, and that George Adams Hardenbergh is the person entitlel to the residue of said estate of said deceden.
>
> Now, Therefore, on motion of Natt W. Miller, representative of said estate, and by virtue of the power and authority vestedin this court by law, It Is Hereby Ordered, Adjudged And Decreed and the said court does hreby Order, Adjudge and Decree, that all andsingular the above described property and allother estate of said decedent in the State o Minnesota, subject to any lawful dispositio heretofore made, be and the same is hereby assigned to and vested in George Adams Hardenbergh.

All property of the estate available for distribution was delivered to and became the property of George. (R. 19.)

The estate of decedent consisted of both real and personal property, the gross value of which was $320,659.41, the value of the real estate being $29,378.08 and of the personalty, $291,281.33. All of the real estate was sold by the administrator of the estate under orders of the probate court for the payment of debts, expenses incurred in the administration, etc.; there remained for distribution the sum of $252,317.63. It was stipulated that if the acts of

taxpayers constituted taxable gifts, the interest of each taxpayer in the estate was of the value of $83,000. (R. 19.)

In determining the deficiencies here involved, the Commissioner held that each taxpayer made a gift in the amount of $83,000 to George. (R. 8, 14, 16.) The Tax Court sustained the action of the Commissioner. (R. 21-22.) The Court of Appeals for the Eighth Circuit affirmed. (R. 46.)

ARGUMENT

Both of the courts below correctly held (R. 21, 46) that the taxpayers, by divesting themselves of their respective interests in the decedent's estate so as to transfer them to the son, George Hardenbergh, made gifts to him within the purview of the gift tax statute.

1. Section 1000 of the Internal Revenue Code (Appendix, *infra,* p. 12) imposes a tax upon the transfer of property by gift, and the tax is applicable whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Section 86.2 of Treasury Regulations 108 (Appendix, *infra,* pp. 13-14) provides that all transactions whereby property or property rights or interests are gratuitously passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax.

Under these controlling provisions, taxpayers' written "renunciations" of their interests in the estate—for the express purpose of giving George

the whole estate in accordance with the decedent's wish (R. 18)—resulted in taxable gifts. "Property", in the form of the two interests in the estate, was "transferred" gratuitously and with donative aim. And the subsequent intervention of the probate court's decree in formally turning over the property to George is immaterial on the point of taxability since the statute taxes "indirect" as well as "direct" gifts. As the courts below held (R. 21, 46), what the probate court did was to deliver to George, at taxpayers' request, property they had given him. Congress used the terms "property", "transfer", "gift", and "indirect" in the broadest and most comprehensive sense (*Smith* v. *Shaughnessy,* 318 U. S. 176, 180; II Paul, *Federal Estate and Gift Taxation* (1942), Sec. 16.03, pp. 1065-1066) and the instant transaction clearly falls within the taxable class. *Cf. Commissioner* v. *Wemyss,* 324 U. S. 303, 306; *Estate of Rogers* v. *Commissioner,* 320 U. S. 410, 414; *Chase Nat. Bank* v. *United States,* 278 U. S. 327, 337.

2. The taxpayers contend, however, that there is a conflict with *Harris* v. *Commissioner,* 340 U. S. 106 (Pet. 3, 6-9). No such conflict exists. *Harris* dealt with the special statutory problems incident to an agreement and divorce decree relating to the mutual release of marital rights upon the ending of a marriage, and the case turned on whether there was "an adequate and full consideration in money or money's worth" for the transfer by the wife. Here, we have entirely different circumstances and no question of consideration; nobody contends that

George gave any consideration for the p property he received, and it is clear that taxpayers r relinquished their interests in order to make a gift in the most ordinary and conventional sense. Mo oreover, the *Harris* decision does not hold or indicate e that where, as here, the acts of the taxpayers are th the source of the transferee's rights it makes any d difference in taxability that a court decree implemen nts the transfer. See 340 U. S. at p. 111. The cas se suggested no more than that in the different ci ircumstances there presented the court decree was th the operative source of the rights.[1]

3. The taxpayers also say (Pet. 3-4, 9-11) that the decision below conflicts with the est tablished rule of the probate courts of Minnesota th hat heirs may renounce in the case of intestate succ cession. Taxpayers' argument is ambiguous and l they do not indicate in what way the courts bel low departed from the applicable Minnesota law.

It is the general rule that, if the ow wner of property dies without a will, the title to s such property passes by force of the rules of law, in n this case the Minnesota Statute of Intestate Su uccession (31 Minnesota Statutes Annotated (M.S. S.A.), Sections 525.13, 525.145, 525.16), and that tho ose so entitled by law have no power to prevent the v vesting of title

[1] In *Harris*, the divorce court could accept, t, reject, or modify the parties' prior agreement, pursuant to its s power "to decree a just and equitable disposition of both the co ommunity and the separate property of the parties". 340 U.S. a at 109-110. Here, on the other hand, the probate court could n not properly have rejected the taxpayers' relinquishment of the heir rights or have declared any person other than George to be the decedent's heir.

in themselves. *Bostian* v. *Milens,* 239 Mo. App. 555, 193 S.W. 2d 797; Note, *Renunciation of benefit under statute of descent and distribution,* 170 A.L.R. 435 (1947); *Coomes* v. *Finegan,* 233 Iowa 448, 7 N.W. 2d 729; 4 Page on Wills (Lifetime Ed.), Section 1401, p. 138. Upon such vesting, the heirs can, of course, dispose of the property as they please.

Here, the law of Minnesota is applicable with respect to the nature and vesting of property interests. *Blair* v. *Commissioner,* 300 U.S. 5, 9-10; *Freuler* v. *Helvering,* 291 U.S. 35, 45. Both of the courts below recognized this principle and they both concluded, after examination of the authorities, that the rule in Minnesota is the same as the general rule referred to above (R. 20-21, 43-46). That conclusion appears to be correct and it is certainly not clearly wrong. In the circumstances there is no occasion for review by this Court of the issue of State law. *Cf. Helvering* v. *Stuart,* 317 U.S. 154, 163; *MacGregor* v. *State Mutual Co.,* 315 U.S. 280; *Estate of Spiegel* v. *Commissioner,* 335 U.S. 701, 707-708.

The decree of the probate court in the instant case is not at variance with our position. It was based upon and issued in recognition of the transfer that taxpayers effected through their "renunciation". Recognizing that taxpayers had relinquished their vested interests in the estate, the court handed over the estate to the only other heir. As pointed out by the courts below (R. 21, 45-46), under Minnesota law the property in question passed

to taxpayers immediately upon the death of the decedent, subject only to the administrator's right of possession and qualified title for purposes of administration. *In re Estate of Butler,* 205 Minn. 60, 284 N.W. 889; *Bengtson* v. *Setterberg,* 227 Minn. 337, 35 N.W. 2d 623; *Brewster* v. *Gage,* 280 U.S. 327, 334. The taxpayers were the real parties in interest; they unquestionably had the right to transfer that interest; and the probate court was empowered to implement that transfer in the course of administration. Decision in gift tax cases turns not so much upon technicalities of title as upon the control of economic benefits (*Burnet* v. *Guggenheim,* 288 U.S. 280, 283-285; *Estate of Sanford* v. *Commissioner,* 308 U.S. 39, 43; *cf. Corliss* v. *Bowers,* 281 U.S. 376, 378) and it would be idle for taxpayers to deny that they were the real owners of the property when they executed the "renunciation", or at least that they owned a substantial interest in the estate.[2]

4. Taxpayers finally contend (Pet. 4, 11-12) that the instant decision conflicts with *Brown* v. *Routzahn,* 63 F. 2d 914 (C. A. 6th), certiorari denied, 290 U.S. 641, but here, too, there is no conflict. That case involved a will and not an intestacy, and it is therefore distinguishable irrespective of whether it can be considered correct. Both of the courts below noted the distinction (R. 20, 43) which is based upon the rule that the beneficiary may accept or reject a gift made by the voluntary act of the testator

[2] It will be noted from the "renunciation" (R. 17-18) that taxpayers specifically undertook to renounce "any and all interest" in the property forming the estate.

in executing his will (4 Page on Wills, *supra,* Section 1402, p. 140; *Brown* v. *Routzahn,* 63 F. 2d at 917); on the other hand, as we have pointed out above, where there is intestacy the rule is otherwise and the heirs cannot by renunciation prevent the passage of an interest in the estate to themselves.

CONCLUSION

The decision is correct; there is no conflict. The petition for writs of certiorari should be denied.

Respectfully submitted,

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Acting Solicitor General.
ELLIS N. SLACK,
Acting Assistant Attorney General.
L. W. POST,
Special Assistant to the Attorney General.

SEPTEMBER 1952.

Internal Revenue Code:

SEC. 1000. IMPOSITION OF TAX.

(a) For the calendar year 1940 and each calendar year thereafter a tax, computed as provided in section 1001, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. Gift taxes for the calendar years 1932-1939, inclusive, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1932, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1932.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

* * * * *

(26 U. S. C. 1946 ed., Sec. 1000.)

SEC. 1002. TRANSFER FOR LESS THAN ADEQUATE AND FULL CONSIDERATION.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of

the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

(26 U. S. C. 1946 ed., Sec. 1002.)

SEC. 1005. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(26 U. S. C. 1946 ed., Sec. 1005.)

Treasury Regulations 108, promulgated under the Internal Revenue Code:

SEC. 86.2. *Transfers Reached.*—(a) *In general.* The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Thus, for example, a taxable transfer may be effected by the declaration of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of a contract of insurance, or the transfer of cash, certificates of deposit, or Federal, State, or municipal bonds. Various statutory provisions, which exempt bonds, notes, bills and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to the gift tax since this tax is an excise tax on the transfer, and is not a tax on the subject of the gift. * * * Inasmuch as the tax also applies to gifts in-

directly made, all transactions whereby property or property rights or interests are gratuitously passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. See, further, section 86.8. * * *

* * * * *

SEC. 86.8. *Transfers for a Consideration in Money or Money's Worth.*—Transfers reached by the statute are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration in money or money's worth to the extent that the value of the property transferred by the donor exceeds the value of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a money value, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift.

SEC. 86.17. *Gifts Made in Property.*—A gift made in property is subject to the tax in the same manner as a gift of cash, and the amount of the gift is the value of the property at the date of the gift.

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